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BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In re )  
 )  
Policies and Rules for the )  
Direct Broadcast Satellite Service ) IB Docket No. 98-21

COMMENTS OF LORAL SPACE & COMMUNICATIONS LTD.

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April 6, 1998

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**COMMENTS OF LORAL SPACE & COMMUNICATIONS LTD.**

Loral Space & Communications Ltd. ("Loral"), by its attorneys, submits these Comments in the above-referenced proceeding.<sup>1</sup>

**I. INTRODUCTION.**

Loral holds a 50 percent interest in R/L DBS Company L.L.C., an FCC construction permittee which holds an authorization to construct a DBS system at 61.5 and 166 degrees W.L.<sup>2</sup> Loral has a substantial stake in the FCC's regulation of satellite services, and submits these comments in support of the Commission's effort to consolidate its DBS rules with its other satellite service rules in Part 25. In addition, Loral supports the Commission's policy of providing flexibility in its regulation of DBS licensees and believes the Commission should continue to promote flexibility in its regulation of the DBS half-CONUS orbital positions. Loral also believes the Commission should affirm the

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<sup>1</sup> In re Policies and Rules for the Direct Broadcast Satellite Service, IB Docket No. 98-21, Notice of Proposed Rulemaking (released Feb. 26, 1998) ("Notice").

<sup>2</sup> In re Application of R/L DBS Co. for Assignment of Continental Satellite Corp.'s Direct Broadcast Satellite Construction Permit, 12 FCC Rcd. 21164 (1997).

International Bureau's interpretation of the DBS foreign ownership rules.

## **II. LORAL SUPPORTS THE COMMISSION'S EFFORT TO STREAMLINE THE DBS RULES.**

### **A. The Commission's Effort Will Create Efficiencies And Benefit Consumers.**

In its Notice, the Commission proposes to eliminate Part 100 and to incorporate the DBS rules located there into Part 25, which governs all other satellite services. Loral agrees with the Commission that the proposed consolidation will reduce confusion and uncertainty for users.<sup>3</sup> Consolidation of the satellite service rules will simplify the development of satellite services,<sup>4</sup> thereby decreasing licensees' regulatory costs. Loral believes these efficiencies will hasten the availability of service to the public, which will advance competition and thereby benefit consumers.

Loral agrees with the Commission that the definition of DBS service should be modified to reference the specific frequencies used by DBS service licensees.<sup>5</sup> The inclusion of a separate DBS definition, modified as proposed by the Commission, will avoid confusion regarding the possible applicability of the DBS rules to other satellite services governed by Part 25.

In addition, Loral supports streamlining the DBS licensing process.<sup>6</sup> Consolidating the grant of DBS construction permits,

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<sup>3</sup> See Notice at ¶ 13.

<sup>4</sup> Id.

<sup>5</sup> Id. at ¶ 19.

<sup>6</sup> See id. at ¶ 24.

launch authority, and licenses into a single process will be more efficient for both the Commission and the applicants. Moreover, it will provide greater certainty for applicants planning their systems. The Commission has tried this approach in the grant of MCI Telecommunications Corporation's DBS authorization for 110 degrees and EchoStar DBS Corporation's DBS authorization for 148 degrees.<sup>7</sup> Interested parties had ample opportunity to comment on the qualifications of those applicants and their planned systems. Similarly, the Commission already grants such consolidated authorizations for construction, launch, and operation of FSS C and Ku-band authorizations.<sup>8</sup> Thus, a single licensing phase for DBS applicants is appropriate and should be adopted.

**B. The Commission Should Permit As Much Flexibility As Necessary To Support The Development Of All DBS Resources.**

In its initial regulation of DBS, the Commission stated that its goal was to "maintain an open and flexible approach that will allow the business judgements of the individual applicants to shape the character of the services offered."<sup>9</sup> Because of this

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<sup>7</sup> In re Application of MCI Telecommunications Corp. For Authority to Construct, Launch and Operate a Direct Broadcast Satellite System at 110° W.L., 12 FCC Rcd. 12538 (1996); In re Application of EchoStar DBS Corp. For Authority to Construct, Launch and Operate a Direct Broadcast Satellite System at 148° W.L., 12 FCC Rcd. 11946 (1996).

<sup>8</sup> See, e.g., In re Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 11 FCC Rcd. 13788 (1996).

<sup>9</sup> In re Inquiry Into the Development of Regulatory Policy In Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference, 90 F.C.C. 2d 676, 698 (1982).

"open and flexible approach", DBS providers have been permitted to develop their services pursuant to market demands. As a result, U.S. consumers have purchased DBS services at a pace exceeding that of any other consumer electronic device.<sup>10</sup> While DBS providers have been able to gain an impressive number of subscribers in such a short period of time,<sup>11</sup> DBS service is far from mature. In fact, the multichannel video programming distribution market is a dynamic and changing one. The Commission must not lose sight of its overall goal to provide DBS providers the flexibility needed to continue developing their services to meet consumer demand.

In its Notice, the Commission seeks comment on its due diligence and geographical service requirements.<sup>12</sup> In implementing and enforcing these requirements, Loral urges the Commission to continue to permit each DBS service provider to use its discretion to develop their DBS assets as the market will permit it. The Commission should provide a flexible approach in adopting requirements for the development of the DBS half-CONUS orbital positions. The Commission's DBS policy should recognize the technical limitations of the half-CONUS slots and provide flexibility when those limitations impede the economics of

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<sup>10</sup> Katie Schuerholz, "Satellites and Broadcasting: A Glimpse of the Future," Via Satellite (April 1997).

<sup>11</sup> The Commission reported that as of June 1997, DBS providers served nearly 5.1 million subscribers. In re Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 97-141, ¶ 55 (released Jan. 13, 1998).

<sup>12</sup> Notice at §§ 26 & 32-36.

constructing, launching, and operating satellites at those locations. The technical limitations of the half-CONUS positions, especially the western positions that view a relatively small portion of the United States, are great. The limited ability of these locations to view the United States and the limited number of transponders assigned to individual permittees may affect the time needed for DBS permittees to fully develop these orbital resources.

As the Commission recognizes, there are a number of requests for extensions of western location authorizations pending or imminent,<sup>13</sup> including a recent application by EchoStar in which it seeks flexible application of the Commission's rules.<sup>14</sup> In addressing these requests, the Commission should afford licensees the opportunity to ascertain consumer demand for services that could be provided in an economically feasible manner using these orbital resources, and should not deprive these licensees a further opportunity to develop viable services. Moreover, the Commission should be flexible in considering proposals to provide services that may not fall strictly within the traditional conception of DBS service, particularly when such proposals are made by licensees at half-CONUS locations.

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<sup>13</sup> Notice at ¶ 10 (and accompanying chart).

<sup>14</sup> In re Directsat Corp., Direct Broadcasting Satellite Corp., EchoStar DBS Corp., EchoStar Satellite Corp. Request to Change Milestone Dates for Their Direct Broadcast Satellite Systems, File Nos. 66-SAT-MP/ML-98, 67-SAT-MP/ML-98, 68-SAT-MP/ML-98, 69-SAT-MP/ML-98 (Public Notice released Jan. 15, 1998).

**III. THE COMMISSION SHOULD AFFIRM THE INTERNATIONAL BUREAU'S INTERPRETATION OF THE DBS FOREIGN OWNERSHIP RULE.**

In its Notice, the Commission requests comments, in the event that it affirms the International Bureau's decision in the MCI Order,<sup>15</sup> on whether it should modify Section 100.11 of its rules to apply the foreign ownership restrictions in Section 310 of the Communications Act to subscription DBS providers.<sup>16</sup> Loral supports the affirmation of the MCI Order and believes the Commission should not apply foreign ownership restrictions to subscription DBS service providers. As the MCI Order correctly reasoned, the interim DBS rule -- Section 100.11 -- was only intended to codify Section 310(b) of the Communications Act. But Section 310, by its terms, does not limit alien ownership of subscription services. There is no persuasive reason to impose additional foreign ownership restrictions on subscription DBS providers.

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<sup>15</sup> See In re Application of MCI Telecommunications corp. For Authority to Construct, Launch and Operate a Direct Broadcast Satellite System at 110° W.L., 11 FCC Rcd. 16275 (1996).

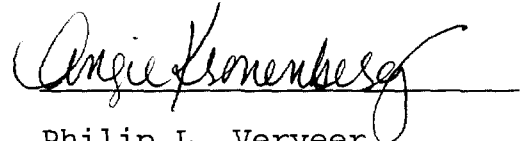
<sup>16</sup> Notice at ¶ 21.

#### IV. CONCLUSION.

The Commission should proceed with its laudable efforts to streamline its DBS rules, should adopt flexible regulatory requirements for the maintenance and development of half-CONUS DBS orbital positions, and should affirm that foreign ownership restrictions do not apply to subscription DBS providers in accordance with the comments above.

Respectfully submitted,

**LORAL SPACE &  
COMMUNICATIONS LTD.**

A handwritten signature in cursive script, appearing to read "Angie Kronenberg", is written over a horizontal line.

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April 6, 1998



## CERTIFICATE OF SERVICE

I, Dennette Manson, do hereby certify that on this 6th day of April, 1998  
copies of the foregoing Comments of Loral Space & Communications Ltd. were delivered by  
hand, unless otherwise indicated, to the following parties:

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